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EXAMINER

NEURAUTER, GEORGE C

ART UNIT	PAPER NUMBER
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2143

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/803,513

Applicant(s)

BAUMEISTER ET AL.

Examiner

George C. Neurauter, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claims 1-24 are currently presented and have been examined.

Response to Arguments

Applicant's arguments filed 9 November 2004 have been fully considered but they are not persuasive.

The Applicant argues that "Icecast" does not disclose initiating transfer of the media data from the datastore to a server system on which the Stream Server selected by the Stream Server Portal is installed. The Examiner does not agree.

"Icecast" discloses this limitation (page 13, section "Source", the text "Static file streamers simply reads the bitrate of the file it is going to send...")

The Applicant also argues that "Icecast" is not an enabling disclosure. The Examiner does not agree. The Applicant cites MPEP 2121.01 as evidence of this nonenablement. MPEP 2121.01 states:

"A reference contains an 'enabling disclosure' if the public was in possession of the claimed invention before the date of invention". *In re Donohue*, 766 F.2d 531, 226 USPQ 619 (Fed. Cir. 1985)

"Icecast" discloses:

"When the icecast team thinks the development version is stable enough for the big public, they create a release. Example

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of releases are icecast-1.1.4 and icecast-1.3.0...To get the latest release, go to www.icecast.org and click on downloads." (page 2, "Latest release")

This disclosure within "Icecast" shows that the public was in possession of the claimed invention before the date of invention. Therefore, "Icecast" is an enabling disclosure. The Examiner has included references regarding the release of icecast-1.1.4 on 1 April 1999 and icecast-1.3.0 on 13 July 1999 that further show that the public was in possession of the invention before the date of invention of the instant application.

Claim Interpretation

A claim limitation will be interpreted to invoke 35 U.S.C. 112, sixth paragraph if it meets the following 3-prong analysis:

(A) the claim limitations must use the phrase "means for" or "step for";

(B) the "means for" or "step for" must be modified by functional language; and

(C) the phrase "means for" or "step for" must not be modified by sufficient structure, material or acts for achieving the specified function.

With respect to the first prong of this analysis, a claim element that does not include the phrase "means for" or "step

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for" will not be considered to invoke 35 U.S.C. 112, sixth paragraph. If an applicant wishes to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant must either: (A) amend the claim to include the phrase "means for" or "step for" in accordance with these guidelines; or (B) show that even though the phrase "means for" or "step for" is not used, the claim limitation is written as a function to be performed and does not recite sufficient structure, material, or acts which would preclude application of 35 U.S.C. 112, sixth paragraph. See *Watts v. XL Systems, Inc.*, 232 F.3d 877, 56 USPQ2d 1836 (Fed. Cir. 2000)

The Streamer Server Portal and Stream Server Controller of claims 21-23 recite the phrase "function component for", therefore, these claims do not invoke 35 U.S.C. 112, sixth paragraph since they fail to meet the criteria for this interpretation.

The Applicant has not provided a clear definition for the terms "application", "program", and "address information" recited in claims 1-24 within the specification. Therefore, the Examiner will interpret these elements by their plain meaning as if the terms were interpreted by one of ordinary skill in the art. See MPEP § 2111.01.

Claim Rejections - 35 USC § 102

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-6, 8-22, and 24 are rejected under 35 U.S.C. 102(a) as being anticipated by "How to configure and run the icecast server" ("Icecast").

Regarding claim 1, "Icecast" discloses a method for streaming media data by a streaming system which contains at least a Stream Server (referred to throughout the reference as "streamer") resided on a server system for reading and sending media data in parallel to a Media Player ("client"), the Media Player residing on a client system for receiving and rendering media data in parallel and a Stream Server Portal ("icecast server") for preparing streaming, whereby media data is stored in a datastore ("source"), comprising at least the steps of:

receiving address information of the media data to be streamed by the Stream Server Portal; (page 8, section "server_name" and "port"; page 11, section "Client", specifically the text "This chapter talks about the different

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clients you can use to connect and listen to a icecast stream";
page 17, section "sources")

selecting suitable Stream Server for the Media Player by
the Stream Server Portal; (page 21-22, section "Relaying")

initiating transfer of the media data from the datastore to
a server system on which the Stream Server selected by the
Stream Server Portal is installed; (page 12, section "Source",
specifically the text "This section lists some of the ways you
have of sending data to the icecast server.")

generating streaming meta data containing at least address
information of the media data stored in the server system
selected by the Stream Server Portal and address information of
the Stream Server; and passing the streaming meta data to the
Media Player. (page 10, section "use_meta_data"; page 17,
section "sources")

Claim 24 is also rejected since this claim recites a
computer program product that contains the same limitations as
recited in claim 1.

Regarding claim 2, "Icecast" discloses the method of claim
1, wherein the address information of the media data to be
streamed is provided by an application or program for invoking
the Media Player or by the Media Player. (page 8, section
"server_name" and "port"; page 11, section "Client",

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specifically the text "This chapter talks about the different clients you can use to connect and listen to a icecast stream"; pages 20-21, section "Directory servers")

Regarding claim 3, "Icecast" discloses the method of claim 1, wherein the address information additionally includes information relating at least one of: type of the Media Player; type of Stream Server and security information and client system information. (page 10, section "use_meta_data"; page 17, section "sources")

Regarding claim 4, "Icecast" discloses the method of claim 1, wherein the Stream Server Portal selects a suitable Stream Server based on the address information provided by an application or program for invoking the Media Player. (page 21-22, section "Relaying", specifically the text "And when a client requests this stream on your server, then you connect and send him the stream")

Regarding claim 5, "Icecast" discloses the method of claim 1, wherein the step for initiating transfer of the media data from the data store to the Stream Server selected by the Stream Server Portal is accomplished only if the media data to be streamed is not already stored on a storage media of the Stream Server selected by the Stream Server Portal. (page 12, section

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"Source", specifically the text "This section lists some of the ways you have of sending data to the icecast server.")

Regarding claim 6, "Icecast" discloses the method of claim 5, wherein the step for initiating transfer of the media data from the data store to the Stream Server selected by the Stream Server Portal is not accomplished if the media data to be streamed are stored on the storage media of the Stream Server selected by the Stream Server Portal and the data integrity between the media stored on the storage media and the datastore is not secured. (page 12, section "Source", specifically the text "This section lists some of the ways you have of sending data to the icecast server.")

Regarding claim 8, "Icecast" discloses the method of claim 1, wherein the streaming meta data is passed from the Stream Server via the Stream Server Portal to the application or program. (page 10, section "use_meta_data", specifically the text "Title streaming means that the [meta data] will be transferred to the icecast server, which in turn will tell...the clients..."; page 12, section "Source", specifically the text "This section lists some of the ways you have of sending data to the icecast server.")

Regarding claim 9, "Icecast" discloses the method of claim 1, wherein the streaming meta data is passed from the Streamer

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Server to the Media Player directly. (page 12, section "Client", specifically "Winamp" and "...it is a...client, and can also be used as a streamer...")

Regarding claim 10, "Icecast" discloses the method of claim 5, wherein the storage media is a cache ("source"). (page 12-13, section "source")

Regarding claim 11, "Icecast" discloses the method of claim 1, wherein the step for initiating transfer of the media data is accomplished by an additional separate Stream Server Controller ("re-encoding streamer") allocated to each Stream Server, whereby the Stream Server Controller and the Stream Server are installed on the same server system. (page 12, section "Source")

Regarding claim 12, "Icecast" discloses the method of claim 11, wherein the step for generating the streaming meta data is accomplished by the separate Stream Server Controller. (page 10, section "use_meta_data")

Regarding claim 13, "Icecast" discloses the method of claim 11, wherein the step for generating the streaming meta data is accomplished by the Stream Server. (page 10, section "use_meta_data")

Regarding claim 15, "Icecast" discloses the method of claim 1, wherein the datastore is installed on a server system

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different from the Stream Server system. (page 21-22, section "Relaying", specifically "pulling relay")

Regarding claim 16, "Icecast" discloses the method of claim 1, wherein the Media Player initiates streaming of the media data from the Stream Server by using the information contained in the streaming meta data. (page 20-21, section "Directory servers", specifically "You get a list of all servers that are currently displaying information to this directory server")

Regarding claim 17, "Icecast" discloses a system for streaming media data comprising:

a Stream Server for reading and sending media data in parallel to a Media Player; ("streamer")

a Media Player for receiving and rendering the media data in parallel; ("client")

a Stream Server Portal ("icecast server") for receiving at least address information of media data to be streamed (page 8, section "server_name" and "port"; page 11, section "Client", specifically the text "This chapter talks about the different clients you can use to connect and listen to a icecast stream"; page 17, section "sources") and choosing a suitable Stream Server for Media Player to be selected (page 21-22, section "Relaying"); and

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a Stream Server Controller ("re-encoding streamer") for initiating transfer of the media data from a datastore to a server system where the Stream Server is installed (page 12, section "Source") and for generating a streaming meta data containing at least address information of the media data stored in the Stream Server system and address information of the Stream Server selected by the Stream Server Portal (page 10, section "use_meta_data"; page 17, section "sources").

Regarding claim 18, "Icecast" discloses the system of claim 17, wherein the Stream Server, the Stream Server Controller, the Media Player, the datastore containing media data and the Stream Server Portal are installed on different servers and the communication between the servers is accomplished via remote calls. ("page 21-22, section "Relaying", specifically "requests")

Regarding claim 19, "Icecast" discloses the system of claim 17, wherein the system further includes an application for gathering address information of media data to be streamed and for passing the address information to the Stream Server Portal. (page 20-21, section "Directory servers", specifically "You get a list of all servers that are currently displaying information to this directory server")

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Regarding claim 20, "Icecast" discloses the system of claim 17, wherein the server system includes a cache ("source") for storing media data. (page 12-13, section "source")

Regarding claim 21, "Icecast" discloses a Streamer Server Portal ("icecast server") for use in a method according to claim 1 comprising:

a function component for receiving at least address information for media data to be streamed (page 8, section "server_name" and "port"; page 11, section "Client", specifically the text "This chapter talks about the different clients you can use to connect and listen to a icecast stream"; page 17, section "sources"); and

a function component for choosing a suitable Stream Server for Media Player to be selected. (page 21-22, section "Relaying", specifically the text "And when a client requests this stream on your server, then you connect and send him the stream")

Regarding claim 22, "Icecast" discloses a Stream Server Controller ("re-encoding streamer") for use in a method according to claim 1, comprising:

a function component for initiating transfer of the media data from the datastore to the server system where the Stream Server is installed (page 12, section "Source"); and

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a function component for generating streaming meta data and transmitting the streaming meta data to the Media Player (page 10, section "use_meta_data"; page 17, section "sources").

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered

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therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 7 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Icecast" in view of US Patent 4 007 450 A to Haibt et al.

Regarding claim 7, "Icecast" discloses the method of claim 6.

"Icecast" does not disclose wherein any update of the media data of the datastore stored in the storage media of the Stream Server initiates a file transfer of the updated media data from the datastore to the storage media of the Stream Server, however, Haibt does disclose these limitations (column 1, lines 15-23)

Haibt discloses that initiating a file transfer of updated data from a datastore to another storage media allows for rapid access to frequently used data and insuring that the updated data is current across all storage medium (column 1, lines 15-23)

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Based on the specific advantages described above in Haibt regarding initiating a file transfer of updated data and wherein both references are directed towards transferring or streaming data between computers using a network, one of ordinary skill in the art would have found it obvious to combine the teachings of these references because one of ordinary skill in the art would have appreciated the specific advantages of the secondary reference and considered each reference to be analogous to one another.

Therefore, it would have been obvious to achieve the limitations as described in the claim.

Regarding claim 23, "Icecast" discloses a Stream Server Controller according to claim 22, further comprising:

a function component for checking whether the media data to be streamed is already stored in the storage media of the Stream Server (page 12, section "Source", specifically the text "This section lists some of the ways you have of sending data to the icecast server."); and

a function component for detecting updates of the media data to be streamed in the datastore and initiating a file transfer of the updated media data from the datastore to the storage media of the Stream Server.

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Claim 23 is rejected since the motivations regarding the obviousness of claim 7 also apply to claim 23.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over "Icecast".

Regarding claim 14, "Icecast" discloses the method of claim 1.

"Icecast" does not disclose wherein transfer of the media data is carried out via File Transfer Protocol.

It would have been obvious to one skilled in the art at the time the invention was made to use the File Transfer Protocol because the Applicant has not disclosed that using the limitation undisclosed in "Icecast" provides any sort of an advantage, is used of a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the method of transferring media data using any protocol such as HTTP as described in "Icecast" as recited in the claim because HTTP and FTP are both protocols that enable data to sent using the TCP transport protocol.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C. Neurauter, Jr. whose telephone number is (571) 272-3918. The examiner can normally be reached on Monday through Friday from 9AM to 5:30PM Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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